

# Barclays American

201 South Tryon Street

P. O. Box 31217

Charlotte, North Carolina 28231

(704) 372-5210

January 7, 1987

RECORDATION NO. 1 5147 Filed & Recorded

7-009A071

Mr. James H. Boyne  
Secretary, Interstate Commerce Commission  
12 and Constitution Avenue, N. W. INTERSTATE COMMERCE COMMISSION  
Washington, D. C. 20423

No. JAN 9 1987  
Date JAN 9 1987  
Fee \$ 10.00

ICC Washington, D.C.

Dear Secretary:

I have enclosed two original copies of the Equipment Lease Agreement dated as of December 29, 1986, between BarclaysAmerican/Leasing, Inc. as Lessor and Borg Warner Chemicals, Inc. as Lessee, to be recorded pursuant to Section 11303 of Title 49 of the U. S. Code.

This Agreement covers the leasing of 179 3 Compartment LO Hopper Cars, identification numbers BWCX 1306 through BWCX 1484 inclusive.

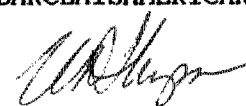
The parties to this transaction are:

Lessee:	Borg Warner Chemicals, Inc. International Center Parkersburg, West Virginia 26102
Owner/Lessor:	BarclaysAmerican/Leasing, Inc. P. O. Box 31217 Charlotte, NC 28231
Vendor:	PLM Railcar Maintenance Company 601 California Street - Suite 1301 San Francisco, CA 94108

A fee of \$ 10.00 is enclosed. Please return the original documents to General Administration Manager, BarclaysAmerican/Leasing, Inc., P. O. Box 31217, Charlotte, NC 28231.

Very truly yours,

BARCLAYSAMERICAN/LEASING, INC.

  
W. D. Thompson  
Vice President  
General Administration Manager

WDT/BDO

Enclosure

1 5147  
RECORDATION NO. \_\_\_\_\_ Filed & Recorded

JAN 9 1987 11-25 AM

INTERSTATE COMMERCE COMMISSION

EQUIPMENT LEASE AGREEMENT

Dated as of 12/29, 1986

between

BARCLAYSAMERICAN/LEASING, INC.

Lessor

and

BORG-WARNER CHEMICALS, INC.

Lessee

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## EQUIPMENT LEASE AGREEMENT

THIS EQUIPMENT LEASE AGREEMENT ("Lease"), dated as of the 29th day of December, 1986, by and between BARCLAYSAMERICAN/LEASING, INC., a North Carolina corporation ("Lessor") and BORG-WARNER CHEMICAL, INC., a Delaware corporation ("Lessee").

### WITNESSETH:

1. DEFINITIONS. Unless the context otherwise requires, the terms in Exhibit A annexed hereto shall have the meanings set forth therein for all purposes of this Lease and shall be equally applicable to both the singular and the plural forms of the terms therein defined.

2. LEASE OF UNITS. Lessor shall lease to Lessee and Lessee shall lease from Lessor, upon and subject to the following terms and conditions, the Units described in Exhibit B annexed hereto.

3. PURCHASE, LEASE AND FUNDING.

a. Purchase, Lease and Funding. Subject to the conditions in Section 3 .b. hereof, (i) on the applicable Delivery Date, Lessor shall purchase each Unit from Vendor and simultaneously lease such Unit to Lessee hereunder, and (ii) on the applicable Funding Date, Lessor shall pay the Lessor's Cost of such Unit to Vendor. Lessor's obligations hereunder shall terminate with respect to any Units for which the Delivery Date and Funding Date do not occur on or before April 30, 1987. The aforesaid purchase and lease shall be conclusively evidenced by the execution and delivery by Lessee of a Certificate of Delivery and Acceptance relating to such Unit substantially in the form of Exhibit D annexed hereto, which Certificate of Delivery and Acceptance shall be

acknowledged by Lessor. Lessee shall give Lessor written notice of the Delivery Date of any Unit and of Lessor's Cost of such Unit at least five (5) Business Days prior to such Funding Date. Each Funding shall take place at the offices of Lessor, at 201 South Tryon Street, P. O. Box 31217, Charlotte, North Carolina 28231.

b. Conditions of Purchase, Lease and Funding.


(1) First Delivery Date Conditions. The obligation of Lessor to purchase and lease any Unit on its Delivery Date and to pay Lessor's Cost of such Unit on any Funding Date shall be subject to fulfillment of the following conditions to the reasonable satisfaction of Lessor and its counsel on or before the First Delivery Date:

(i) Lessor shall have received a fully executed copy of this Lease.

(ii) Lessor shall have received copies, certified by an officer of Lessee and dated on or before the First Delivery Date, of the appropriate proceedings of the Board of Directors or executive committee thereof of Lessee with respect to the authorization of this Lease, the Certificates of Delivery and Acceptance, the Assignments of Purchase Order, the Bills of Sale, and other instruments contemplated herein and therein and to the execution, delivery and performance thereof by Lessee.

(iii) Lessor shall have received certificates of Lessee showing the incumbency and the specimen signatures of the officers of Lessee who will execute, as appropriate, this Lease, the Certificates of Delivery and Acceptance, the Assignments of Purchase Order, the Bills of Sale, and the other instruments contemplated herein and therein.

(iv) Lessor shall have received a signed opinion dated the First Delivery Date of such legal counsel for Lessee as is reasonably acceptable to Lessor, in the form set forth in Exhibit E annexed hereto.

(v) Lessor shall have received a Guaranty <sup>within 30 days of</sup> ~~dated prior to~~  execution ~~concurrently with the date~~ of the Lease in the form set forth in Exhibit G, annexed hereto which shall have been executed on behalf of Borg-Warner Corporation.

(vi) Lessor shall have received a signed opinion dated prior to or concurrently with date of this Lease of legal counsel for Guarantor as is reasonably acceptable to Lessor, in the form set forth in Exhibit H, annexed hereto.

(vii) Lessor shall have received the consolidated balance sheet and statement of income of the Guarantor heretofore delivered to the Lessor dated December 31, 1985 that have been prepared in accordance with generally accepted accounting principles and fairly present the financial position of the Guarantor on and as of the date thereof and the results of its operations for the period or periods covered thereby. Since December 31, 1985 there has been no material and adverse change in the financial condition of the Guarantor from that shown in such balance sheet and statement of income dated December 31, 1985.

(2) Delivery Date Conditions. The obligation of Lessor to purchase and lease any Unit on its Delivery Date and to pay Lessor's Cost of such Unit on any Funding Date shall be subject to fulfillment of the following conditions to the reasonable satisfaction of Lessor and its counsel on or before such Delivery Date:

(1) The representations and warranties of Lessee contained herein and of each such party in any certificate delivered pursuant hereto or thereto shall be true and correct on and as of such Delivery Date with the same effect as though made on and as of such Delivery Date; on such Delivery Date there shall be no Event of Default or no event which, but for the lapse of time or the giving notice or both, would be an Event of Default.



(ii) Lessor shall have received a signed opinion dated on such Delivery Date of such legal counsel for Lessee as is reasonably acceptable to Lessor, in the form set forth in Exhibit E hereto.

(iii) A copy of this Agreement, and any assignments hereunder, shall have been filed and recorded with the Interstate Commerce Commission.

(iv) Since the date of execution of this Lease there shall not have been any material adverse change in the business, operations, properties or financial condition of Lessee and/or Guarantor.

(v) Lessor's Cost of such Unit will not cause the aggregate Lessor's Cost of all Units delivered and accepted hereunder to exceed \$7,000,000.00.

(vi) Lessor shall have received an executed Certificate of Delivery and Acceptance with respect to such Unit.

(vii) Lessor shall have received a certificate or certificates or other evidence acceptable to Lessor in respect of the insurance required under Section 9 hereof.

(3) General Funding Date Conditions. The obligation of Lessor to pay Lessor's Cost of any Unit on any Funding Date shall be subject to the fulfillment of the following conditions to the reasonable satisfaction of Lessor and its counsel on or before said Funding Date:

(i) Lessor shall have received an invoice for such Unit from the Vendor.

(ii) Lessor shall have received an executed Bill of Sale from the Vendor with respect to each Unit.

c. Transaction Indemnity. In the event that, as to any Unit, for any reason whatsoever, each condition precedent to the transactions as contemplated herein is not satisfied or waived or any Unit suffers a Casualty Occurrence before the Delivery Date with respect thereto, (i) such Unit shall be excluded from the definition of "Leased Equipment," (ii) Lessor shall reassign all of its right, title and interest in and to such Unit to Lessee without recourse or warranty other than for claims resulting from or arising out of Lessor's breach of any Lessor Obligations and (iii) Lessee shall indemnify, protect and keep harmless Lessor and its successors, assigns, representatives, agents and servants from and against any and all claims which may be imposed on, incurred by or asserted against Lessor or in any way relating to or arising out of the purchase, acceptance, ownership, delivery, use, sale, return or other disposition of such Unit except for Claims resulting from or arising out of Lessor's breach of Lessor Obligations. The provisions of this Section 3.c. shall survive the expiration or earlier termination of this Lease.

4. LEASE TERM. The term of this Lease for each Unit shall commence on the Delivery Date for such Unit and shall end on the Expiration Date for such Unit (hereinafter "Lease Term"), unless sooner terminated pursuant to Section 12 or 18 hereof.

5. RENTAL.

a. Basic Rent. The Lessee shall pay to the Lessor or its Assigns as basic rent (herein referred to as "Basic Rent") for each Unit, the following:

(i) On the Interim Rent Date an amount equal to the Daily Lease Rate Factor multiplied by the Lessor's Cost of such Unit, for each day elapsed from and including the Funding Date of each Unit, with respect to such Unit to, but excluding the Basic Lease Term Commencement Date.

(ii) On the First Rental Payment Date, and on each Rental Payment Date after the First Rental Payment Date to, and including, the Last Rental Payment Date, an amount equal to the Basic Lease Rate Factor multiplied by the Lessor's Cost of such Unit.

b. Supplemental Rent. Lessee shall also pay to Lessor or its assigns, as Supplemental Rent, any and all amounts, liabilities and obligations which Lessee assumes or agrees to pay hereunder to Lessor or others, including, without limitation, Casualty Loss Values payable under Section 12.c. hereof and the indemnities provided for in Sections 11.a. and 21 hereof, promptly as the same shall become due and owing, and in the event of any failure by Lessee to pay any Supplemental Rent, Lessor or its assigns shall have all rights, powers and remedies provided for herein or by law or equity or otherwise as in the case of nonpayment of Basic Rent. Lessee shall also pay to Lessor on demand, as Supplemental Rent, to the extent permitted by applicable law, interest at the Default Interest Rate on any part of any installment of Basic Rent and any payment of Casualty Loss Value not paid when due for the period for which the same shall be overdue and on any other payment of Supplemental Rent due hereunder and not paid when due to Lessor for the period when due until the same shall be paid.

c. Obligation to Pay Rent. This is a net lease and Lessee's obligation to pay all Basic Rent and Supplemental Rent payable hereunder in accordance with the terms hereof shall be absolute and unconditional, provided Lessee's right to quiet enjoyment is not impaired and shall not be affected by any circumstance, including, without limitation: (i) any setoff, counterclaim, recoupment, deduction, defense or other right which Lessee may have against any vendor, manufacturer or supplier or anyone else for any reason whatsoever; (ii) any defect in the title, condition, design, operation, merchantability or fitness for use of any Unit; (iii) the existence of any liens, encumbrances or rights of others whatsoever with respect to any Unit, whether or not resulting from

claims against the Lessor; (iv) subject to Section 12.c. hereof, any loss or destruction of, or damage to, any Unit or any interruption or cessation in the use or possession thereof for any reason whatsoever and of whatever duration; (v) the invalidity or unenforceability of the Lease or any other infirmity therein or any lack of power or authority of Lessor or Lessee to enter into the Lease; or (vi) any insolvency, bankruptcy, reorganization or similar proceedings by or against Lessee or Lessor. If for any reason whatsoever (other than pursuant to Section 12.c. hereof or resulting from or arising out of Lessor's breach of any Lessor Obligations) this Lease shall be terminated in whole or in part by operation of law or otherwise except as specifically provided herein, Lessee shall nonetheless pay to Lessor an amount equal to each payment of Rent at the time such payment would have become due and payable in accordance with the terms hereof had this Lease not been terminated in whole or in part. Each payment of Basic Rent or Supplemental Rent made by Lessee shall be final, and Lessee will not seek to recover all or any part of such payments from Lessor or any other person for any reason whatsoever. This provision, however, shall not be construed to waive or in any other manner adversely affect Lessee's right of action, if any, against Lessor or any other person for damages incurred by Lessee on account of any breach by Lessor or such other person of any provision of this Lease or any other agreement relating or not relating hereto.

6. DISCLAIMER THE LESSOR DOES NOT MAKE, HAS NOT MADE, NOR SHALL BE DEEMED TO MAKE OR HAVE MADE, ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN, COMPLIANCE WITH SPECIFICATIONS, OPERATION OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS OF EQUIPMENT OR ANY COMPONENT

THEREOF DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR DOES NOT MAKE ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS OF EQUIPMENT OR ANY COMPONENT THEREOF FOR ANY PARTICULAR PURPOSE, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT OF EQUIPMENT OR ANY COMPONENT THEREOF (EITHER UPON DELIVERY THEREOF TO THE LESSOR OR OTHERWISE), it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee, but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Agreement to assert and enforce, from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against any Supplier of the Equipment. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following, (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any unit(s) of Equipment or by any inadequacy thereof or deficiency or defect therein or by any other circumstance in connection therewith; (ii) the use, operation or performance of any such unit(s) or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any unit(s); provided, however, that nothing in this Section shall release Lessor from any loss, injury or damage arising as a result of the deliberate or negligent acts or omissions of the Lessor, its agents, servants, employees, successors or assigns or other third party lessees of the Lessor under unrelated leases or any loss, injury or damage attributable to the acts of omissions of the Lessor at any time the Lessor is in possession of Equipment following the return thereof pursuant to Section 6 hereof. So long as no Event of Default or event which, with the lapse of time or the giving of notice or both, would be an Event of Default, shall have occurred and be continuing, Lessor hereby assigns to Lessee, for and

during the term of this Lease, any applicable Seller or manufacturer warranty issued on or applicable to any Unit, and Lessor hereby authorizes Lessee during the term of this Lease to obtain, at Lessee's sole expense, any and all services furnished in connection therewith by any Seller or manufacturer.

7. OPERATION AND MAINTENANCE OF UNITS.

a. General. Lessee shall operate the Units only in the normal and ordinary course of Lessee's business within the United States except for incidental usage in Canada and Mexico.

b. Lessee's Maintenance Obligation. Lessee, at its own expense, shall maintain, service and repair each Unit, and from time to time make or cause to be made all necessary restorations thereto, as are consistent with prudent industry practice and as are in compliance with Section 7.c. hereof and in accordance with the applicable rules and regulations of the American Association of Railroads, if any. Each Unit shall at all times be maintained such that it shall not be prohibited from being operated as intended at the Delivery Date pursuant to such aforesaid rules and regulations. In addition, each Unit shall at all times be maintained to comply with all applicable safety regulations of the American Association of Railroads.

c. Lessee's Compliance with Law. Lessee shall comply in all material respects with all laws, rules, regulations, requirements and orders of all governmental authorities having jurisdiction with respect to the use, maintenance, condition and operation of each Unit (including but not limited to the American Association of Railroads) (regardless of upon which person such laws, rules, regulations, requirements or orders shall, by their terms, be nominally imposed), unless Lessee shall be contesting the validity thereof in good faith and by appropriate proceedings. Lessee, at its own expense, shall procure and pay for all

permits, franchises, inspections and licenses necessary or appropriate in connection with any Unit and any repair, restoration, replacement, renewal, addition or improvement thereof and thereto.

d. Lessor's Rights and Obligations. Lessor shall not be required to maintain, service or repair, or to make any repair, restoration, replacement, renewal, addition or improvement of any nature or description with respect to, any Unit, or, except to the extent specifically provided herein, to incur any cost or expense in connection with this Lease. In the event Lessee fails or is unable to perform maintenance and repairs as provided herein, Lessor shall have the right, but not the obligation, to perform the same, in the manner and subject to the provisions set forth in Section 23 hereof. Lessor and its agents and employees shall have at all reasonable times during normal business hours (upon reasonable notice) the right of access to the premises where any Unit is located for the purposes, at Lessor's expense, of inspecting such Unit and any maintenance records and observing its use and operation.

8. ADDITIONS AND IMPROVEMENTS.

a. Generally. Except as may be required pursuant to Section 8.b. or Section 7.c. hereof or as permitted pursuant to Section 8.d. hereof, Lessee shall not make any addition or improvement to any Unit which is not readily removable without causing material damage to any Unit. Lessee shall be entitled from time to time during the term of this Lease to acquire and install, at Lessee's expense, such additions or improvements to the Leased Equipment which are readily removable without causing material damage to any Unit and which do not impair the Fair Market Value or utility of any Unit as originally delivered hereunder to Lessee (ordinary wear and tear excepted).

b. Compliance with Law. Lessee agrees to make, at its own expense and without offset for Rent due hereunder, any addition or

improvement required to be made to any Unit in order to satisfy Lessee's obligations set forth in Section 7.c. hereof. Any such addition or improvement shall immediately and without further act become the property of Lessor.

c. Severable Additions. Should Lessee install any addition or improvement on any Unit which is readily removable without causing material damage to such Unit and which does not impair the Fair Market Value or utility of such Unit as originally delivered hereunder to Lessee (ordinary wear and tear excepted), Lessee may remove such addition or improvement before such Unit is returned to Lessor. Lessee shall repair all damage to such Unit resulting from such installation and removal so as to restore the Unit to the condition in which it existed prior to the installation of such addition or improvement (ordinary wear and tear excepted). Notwithstanding the foregoing and provided that Lessee has not exercised its option to purchase such Unit pursuant to Section 15 hereof, any addition or improvement not removed shall become the property of Lessor.

d. Non-severable Additions. Lessee may make to any Unit any addition or improvement which is not readily removable without causing material damage to such Unit which will not decrease the value, utility or marketability of the Unit, such additions or improvement shall immediately and without further act become the property of Lessor.

#### 9. INSURANCE.

a. General. Lessee agrees to carry, at its own cost and expense and continuously maintain, with financially sound insurers of recognized responsibility, and approved by Lessor, the following insurance coverages: (i) Comprehensive public liability (both bodily injury and property damage) insurance in respect of the Units at the time subject hereto, at least in amounts and against risks customarily insured



against by railroad companies or the Lessee on similar equipment owned by them or it. In no event shall the Lessee permit such insurance coverage to be less than \$15,000,000. Such amount shall include deductibles which are not inconsistent with prudent industry practice, and (ii) Insurance against loss or damage to the Units or any part thereof, which insurance shall be in amounts aggregating at all times not less than the then Casualty Loss Value of the Units; provided that the Lessee may self-insure against such risks by deductible provisions of up to \$50,000. for each loss or damage. Such insurance coverage shall be "primary coverage" for the protection of the Lessee and Lessor notwithstanding other coverage carried by the Lessee or Lessor protecting against similar risks. Such insurance shall name the Lessor as an additional insured and/or loss payee with all attendant rights thereto, subject to the terms and conditions of the policy.

Such policy or policies shall provide that they may not be materially modified or terminated or cancelled unless Lessor is given at least (30) days advance written notice thereof. Lessee shall furnish Lessor with certificates of such insurance or copies of policies and renewal certificates or other statements with respect to renewal of existing policies or purchase of other insurance within 30 days of such renewal date.

b. Performance by Lessor. In the event that Lessee shall fail to maintain insurance as herein provided, Lessor may at its option, but without obligation, provide such insurance and, in such event, Lessee shall, upon demand from time to time, reimburse Lessor for the cost thereof, together with interest on such cost at the Default Interest Rate computed from the date of payment of such cost to the date of reimbursement. Lessor shall give Lessee prompt written notice of any such insurance.

c. Separate Insurance. Nothing in this Section 9 shall be construed to prohibit Lessor from insuring at its own expense any Unit or its interest therein;; and any insurance so maintained shall not provide for or result in a reduction of the coverage or the amounts payable under any of the insurance required to be maintained by Lessee under this Section 9.

10. TITLE AND LIENS.

a. Title. Lessor and Lessee agree that this is an agreement of lease only, and nothing contained herein shall be construed as conveying to Lessee any right, title or interest in or to the Units except as Lessee. Lessor and Lessee intend that title for state and local property laws purposes vest in the Lessor and that the Leased Equipment is and shall remain personal property and each of them agrees that it will not itself take any action, and will use its best efforts to prevent any others from taking any action, which would cause any Unit to lose such character. The Leased Equipment shall remain personal property regardless of the degree or manner of its attachment to realty and title thereto shall remain exclusively in Lessor. At Lessor's request, Lessee shall execute any and all documents acknowledging Lessor's ownership of the Units. Lessee shall execute any and all documents which are presented to Lessee as necessary or appropriate to perfect, confirm and protect the interest of Lessor in and to the Units and this Lease.

b. Liens. Lessee shall keep the Leased Equipment free from any and all liens, encumbrances and claims (except Permitted Liens) and shall not do or permit any act or thing whereby Lessor's title or rights may be encumbered or impaired. Lessee agrees to take such action (including the obtaining and recording of waivers), at its own expense, as may be necessary to prevent any third party from acquiring any right to or interest in the Leased Equipment by virtue of the Leased Equipment

being deemed to be real property or part of any real property, and if at any time any person shall claim any right or interest referred to above, Lessee will, at its own expense, cause such claim to be waived in writing or otherwise eliminated to Lessor's reasonable satisfaction within thirty (30) days after such claim shall at first become known to Lessee.

11. TAXES AND OTHER CHARGES.

a. General. Subject to contest rights set forth in Section 11. e. hereof, Lessee shall pay, indemnify and hold Lessor harmless from, and shall reimburse Lessor for, all taxes and governmental charges, including, without limitation, ~~income~~ sales, use, gross receipts, fuel, stamp, personal property, excise or other taxes, tolls, levies, imposts, duties, charges or withholdings of any nature, along with any penalties, fines or interest thereon imposed against Lessor by any foreign, federal, state or local government or taxing authority or any subdivision thereof: (i) upon or with respect or incidental to the Leased Equipment or any Unit or any part thereof; (ii) upon the ordering, purchase, ownership, delivery, leasing, subleasing, possession, registration, use, operation, return or other disposition thereof; (iii) upon the rentals, receipts, or earnings arising therefrom; or (iv) upon or with respect to this Lease (all such expenses, taxes, fees, charges, fines, penalties and additions to tax being hereinafter called "Impositions"), provided that this Section 11.a. shall not apply to (A) Impositions included in Lessor's Cost of the Leased Equipment, (B) Impositions imposed by the United States or any state or political subdivision thereof which are based upon or measured by Lessor's net income or which are in substitution for, or relieve Lessor from, any Imposition based upon or measured by Lessor's net income, in each case with the exception of increases in Impositions covered by Section 11.b. hereof, (C) business and occupation taxes and franchise taxes imposed on Lessor by the United States or any state or political subdivision thereof not attributable to this transaction, (D) penalties, fines or interest imposed as a result of Lessor's failure to

notify Lessee as provided by Section 11.d or as a result of Lessors ~~gross~~ negligence or as a result of Lessor's failure to file reports and returns which are not otherwise regarded to be filed by Lessee pursuant to this Section 11. RLL

b. After-tax Basis. The indemnity amounts payable under Section 11.a. hereof shall be computed on an "after-tax" basis, so that any such indemnity payment shall be in an amount which, when reduced by the increase in the federal, state and local tax liability of the Lessor based upon or measured by Lessor's net income as a result of such payment and after taking into account any present or future tax benefits to Lessor arising from such payment or the circumstances giving rise to such payment, shall equal the amount of the tax in respect of which such indemnity is payable. Lessee may within thirty (30) days of receipt of notice from Lessor of the amount of the indemnity amount payable request that the independent Big Eight Public Accounting Firm mutually selected by Lessor and Lessee verify at Lessee's expense the computations performed by Lessor in determining the indemnity amount and Lessor shall provide such accountants with information which is reasonably necessary to perform such verification.

c. Offsets. Notwithstanding Sections 11.a. or 11 b. hereof, to the extent that Lessor receives or is allowed a refund of or credit against any Imposition which has actually been paid by Lessee, Lessor shall notify Lessee of said refund or credit within thirty (30) days thereof, and Lessee's obligations under Section 11.a. hereof to Lessor shall be offset to the extent of such refund or credit, or Lessee shall be entitled to a refund of such amount pursuant to Section 11 with respect to such Imposition.

d. Tax Filing and Payments. Lessee shall timely prepare and file all reports and returns which are required to be made with respect to any obligation of Lessee under, or arising out of, Section 11.a.

hereof. Lessee shall, to the extent permitted by law, cause all billings of such fees, taxes, charges, fines, penalties and additions to tax to be made to Lessor in care of Lessee, make payment thereof and, from time to time on written request of Lessor submit written evidence of such payment. Lessor shall use its best efforts to furnish Lessee, promptly after receipt, copies of all requests for information from any taxing authority relating to any obligation of Lessee under, or arising out of, Section 11.a. hereof, and shall request such taxing authority to contact Lessee regarding any such information. The provisions of this Section 11 shall survive the expiration or earlier termination of this Lease with respect to any Imposition which arise from acts or events which occur prior to expiration or early termination of the Lease Term and return of the Leased Equipment pursuant to Section 16 hereof or purchase of the Leased Equipment pursuant to Section 15 hereof.

12. RISK OF LOSS.

a. Generally. During the term of this Lease with respect to any Unit, Lessee shall bear the risk of and all responsibility for loss or damage to such Unit of any kind whatsoever. Lessee agrees to indemnify and hold Lessor harmless against all risks to the Leased Equipment, including, without limitation, loss or damage caused by fire, lightning, tornadoes, wind storm, water damage, explosion, strikes, riots, civil commotion, vandalism, malicious mischief, burglary and theft.

b. Casualty Occurrence. In the event that a Unit shall be or become (i) lost, stolen, destroyed, (ii) in Lessee's reasonable judgment, irreparably damaged or damaged beyond economic repair, from any cause whatsoever, or (iii) taken or requisitioned by any governmental body by condemnation or similar proceeding which results in the loss of possession of such Unit by Lessee for a period of more than one hundred eighty (180) consecutive days or for a period which exceeds the then remaining term of this Lease with respect to such Unit (any such event

described in clauses (i), (ii) or (iii) herein called a "Casualty Occurrence"), Lessee shall within 30 days of its acquiring knowledge thereof notify Lessor of the location of the Unit, if known, the nature of the Casualty Occurrence and any other pertinent information regarding the Casualty Occurrence or any other liability claims.

c. Consequences of Casualty Occurrence. In the event of a Casualty Occurrence with respect to a Unit, Lessee shall pay to Lessor on the earlier of the next Rental Payment Date occurring no sooner than 30 days following notice of such Casualty Occurrence or on the Expiration Date (the "Casualty Loss Payment Date") (A) all unpaid Basic Rent including Basic Rent due on such Casualty Loss Payment Date on the next Rental Payment Date occurring no sooner than 30 days following such Casualty Occurrence or Expiration Date following such Casualty Occurrence, as the case may be, and Supplemental Rent (excluding Casualty Loss Values which are covered in (B), below) hereunder to and including such Casualty Loss Payment Date, and (B) the Casualty Loss Value for such Unit. If Lessee has paid Lessor such amounts and has paid all unpaid license, personal property, highway, use or other taxes, excises or charges that may have accrued with respect to such Unit, then, and in such event, the obligation of Lessee to pay Basic Rent with respect to such Unit on or after the Casualty Loss Payment Date shall cease, and the term of this Lease with respect to such Unit shall terminate on such Casualty Loss Payment Date except for obligations which, by the terms hereof, expressly survive the termination hereof. Without limitation, Lessee's obligation to pay all unpaid license, personal property, highway, use or other taxes, excises or charges that may have accrued with respect to a Unit, but which are not yet payable at the time of the Casualty Occurrence, shall survive termination hereof. On such Casualty Loss Payment Date, Lessee shall take possession of such Unit, and Lessor shall, upon request of Lessee, execute and deliver to, or upon the order of, Lessee a bill of sale for such Unit (without warranties other than for liens or claims resulting from or arising out of acts of Lessor or

claims of Lessor's creditors for which Lessee is not responsible under this Lease). Except as otherwise provided in this Section 12.c., Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, a Casualty Occurrence to any Unit after delivery to and acceptance of such Unit by Lessee hereunder and prior to termination of this Lease and delivery by Lessee to Lessor of such Units pursuant to Section 16 hereof.

13. ASSIGNMENTS AND SUBLEASES.

a. Lessor. Lessor may, from time to time, assign (whether as security or otherwise) all or any part of its right, title and interest in this Lease, including all moneys and claims for moneys due and to become due to it. In the event of such assignment, Lessor shall remain liable for the performance of all Lessor Obligations. Such assignee shall have no obligation or liability under this Lease by reason of or arising out of such assignment, nor shall such assignee be required or obligated in any manner to perform or fulfill any obligations of Lessor under this Lease.

b. Lessee. So long as no Event of Default (or event which would constitute an Event of Default but for the lapse of time or the giving of notice or both) shall have occurred and be continuing, the Lessee shall be entitled to sublease the Units to, or to permit their use under the terms of car contracts by, a sublessee or user incorporated in the United States of America (or any State thereof or the District of Columbia), upon lines of railroad owned or operated by a railroad company or companies incorporated in the United States of America (or any State thereof or the District of Columbia) or Canada, or over which such railroad company or companies have trackage rights or rights for operation of their trains, and upon connections and other carriers in the usual interchange of traffic in the continental United States, only upon and subject to all the terms and conditions of this Lease; provided,

however, Lessee shall not (i) permit any such sublease to extend beyond the Basic Lease Expiration Date of this Lease and, (ii) sublease the Units to, or permit their use by, any person in whose hands such Units would not qualify as "section 38 property" within the meaning of the Code nor shall Units be used predominantly outside the United States of America within the meaning of section 48(a) of the Code.

Any such sublease may provide that the sublessee, so long as it shall not be in default under such sublease, shall be entitled to the possession of the Units included in such sublease and the use thereof; provided, however, that every such sublease shall be subject to the rights and remedies of the Lessor under the Lease in respect of the Units covered by such sublease upon the occurrence of an Event of Default hereunder. Lessor shall be provided a copy of any such sublease.

The Lessee, at its own expense, will as soon as possible cause to be duly discharged any lien, charge, security interest or other encumbrance (except any sublease or car contract as aforesaid and other than an encumbrance resulting from claims against the Lessor not related to the ownership or leasing of the Units) which may at any time be imposed on or with respect to any Unit including any accession thereto or the interest of the Lessor or the Lessee therein. The Lessee shall also take all necessary action to protect the right, title, and interest of the Lessor in Units to be so subleased or used. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of this Section 13.

No sublease permitted in accordance with this Section 13 shall in any way relieve Lessee from any obligation under this Lease, and Lessee hereby waives any rights it may now have or hereafter acquire to avoid any such obligation by reason of such sublease or any circumstances arising from



such sublease. Lessee agrees to indemnify and hold harmless Lessor against any and all reasonable out-of-pocket expenses, claims, demands and liabilities, of whatever nature, relating to or in any way arising out of such sublease, including, without limitation, reasonable out-of-pocket expenses incurred in recording Lessor's security interest in such sublease and in evaluating any proposed sublease, and all reasonable costs, damages, charges, attorneys' fees and expenses arising out of or necessitated by assertion of any such claim or demand with regard to such sublease.

14. RENEWAL OPTION Provided (1) that no Event of Default (or an event which would constitute an Event of Default but for the lapse of time or the giving of notice or both) shall have occurred and be continuing, and (2) that this Lease has not been earlier terminated, Lessee shall have the option to extend the term of this Lease in respect to all and not less than all of the Units leased hereunder for a maximum of three consecutive one-year periods commencing on the Basic Lease Term Expiration Date and ending on the sixteenth, seventeenth and eighteenth anniversaries of the Basic Lease Term Commencement Date respectively, (hereinafter "Extended Term") at the Units' Fair Market Rental payable monthly, in advance, commencing on the appropriate First Extended Lease Payment Date and ending on the appropriate Last Extended Lease Payment Date. Fair Market Rental Value shall be determined by an agreement between Lessor and Lessee, and if they cannot agree then as determined by the appraisal procedure set forth herein, provided that Lessee gives Lessor notice in writing of its election to exercise such renewal option not less than 180 days prior to the Basic Lease Term Expiration Date or any Extended Term Expiration Date thereafter. If Lessor and Lessee cannot agree on the then Fair Market Rental Value of the Leased Equipment, Lessee shall not later than 150 days prior to the expiration of the Basic Lease Term or an Extended Term thereafter, by notice in writing to Lessor, advise Lessor that Lessee desires to have such Fair Market Rental Value determined by an independent appraiser satisfactory

to Lessor and Lessee (or, if Lessor and Lessee are unable to agree upon an appraiser within 20 days after the giving of such notice, by a panel of three appraisers, one of whom shall be selected by Lessor, another of whom shall be selected by Lessee and the third of whom shall be selected by the other two or such appraiser shall be the American Appraisal Company, Milwaukee, Wisconsin, if such other two appraisers are unable to agree upon a third). The appraisers appointed pursuant to the foregoing procedure shall be appointed within 5 days and shall be instructed to determine Fair Market Rental Value of the Leased Equipment within 30 days after their appointment. If the parties shall have appointed a single appraiser, his determination of value shall be final and binding as the Fair Market Rental Value. If three appraisers shall have been appointed as hereinabove set forth, the values determined by the three appraisers shall be averaged, the determination which shall differ most from such average shall be disregarded, the remaining two determinations shall be averaged, and such average shall be final and binding as the Fair Market Rental Value. At any time prior to the ninety-day period immediately preceding the expiration of the Lease Term, or any Extended Term thereafter Lessee shall have the right to rescind its election to extend the term by written notice to the Lessor. If the Lessee does not rescind its election, the Lessor shall extend the term immediately upon the expiration of the Lease Term or any Extended Term thereafter and Lessee shall make payment as described in this Section 14. The cost of appraisal, if any, incurred in connection with the determination of Fair Market Rental Value pursuant to this Section 14 shall be equally shared by Lessee and Lessor.

15. PURCHASE OPTION. Provided that no Event of Default (or an event which would constitute an Event of Default but for the lapse of time or the giving of notice or both) shall have occurred and be continuing, Lessee shall have the option to purchase all, but not less than all, of the Leased Equipment upon the expiration of the Lease Term or any Extended Term thereafter for an amount equal to the then Fair Market

Value, as determined by an agreement between Lessor and Lessee, and if they cannot agree then as determined by the appraisal procedure set forth herein, of the Leased Equipment, provided that Lessee gives Lessor notice in writing of its election to exercise such purchase option not less than 180 days prior to the expiration of the Lease Term or any Extended Terms. If Lessor and Lessee cannot agree on the then Fair Market Value of the Leased Equipment, Lessee shall not later than 150 days prior to the expiration of the Lease Term or Extended Term by notice in writing to Lessor, advise Lessor that Lessee desires to have such Fair Market Value determined by an independent appraiser satisfactory to Lessor and Lessee (or, if Lessor and Lessee are unable to agree upon an appraiser within 20 days after the giving of such notice, by a panel of three appraisers, one of whom shall be selected by Lessor, another of whom shall be selected by Lessee and the third of whom shall be selected by the other two or such appraiser shall be the American Appraisal Company, Milwaukee, Wisconsin, if such other two appraisers are unable to agree upon a third). The appraisers appointed pursuant to the foregoing procedure shall be appointed within 5 days and shall be instructed to determine Fair Market Value of the Leased Equipment within 30 days after their appointment. If the parties shall have appointed a single appraiser, his determination of value shall be final and binding as the Fair Market Value. If three appraisers shall have been appointed as hereinabove set forth, the values determined by the three appraisers shall be averaged, the determination which shall differ most from such average shall be disregarded, the remaining two determinations shall be averaged, and such average shall be final and binding as the Fair Market Value. At any time prior to the ninety-day period immediately preceding the expiration of the Lease Term or Extended Term, Lessee shall have the right to rescind its election to purchase the Leased Equipment by written notice to the Lessor. If the Lessee does not rescind its election, the Lessee shall purchase the Leased Equipment for the then Fair Market Value determined as provided in this Section 15 immediately upon the expiration of the Lease Term or Extended Lease Term. Payment in full of the amount to be paid to Lessor

shall be made in cash on or prior to the date such sale is consummated in accordance with this Section 15. The cost of appraisal, if any, incurred in connection with the determination of Fair Market Value pursuant to this Section 15 shall be equally shared by Lessee and Lessor.

16. RETURN OF EQUIPMENT. In the event that Lessee does not exercise the purchase option described in Section 15 with respect to the Units, Lessee shall, at its own expense and risk, on or prior to the Basic Lease Expiration Date or the Extended Term Expiration Date as appropriate, deliver possession of each Unit at one or more of up to three storage locations in the continental United States designated by Lessor and communicated to Lessee not less than 180 days prior to expiration or as otherwise agreed to by Lessee and Lessor. Each Unit shall, on its return, (i) contain additions, improvements or accessories added to such Unit as required in accordance with Section 7.c. hereof, (ii) be free of liens and (iii) be in the same condition as when delivered and accepted hereunder, ordinary wear and tear excepted and in good operating order, repair, and condition in each case, as required by the terms of the Lease including, without limitation, Sections 7, 8 and 10 hereof.

17. DEFAULT. The following events shall constitute Events of Default hereunder:

(i) Lessee shall fail to make any payment of Basic Rent or Extended Term Rent or Casualty Loss Value when due.

(ii) Lessee shall fail to cause reinstatement of cancelled insurance coverage or there shall occur any termination of, material alteration in the scope of the coverage of, or reduction in the amounts payable under any public liability or physical damage insurance to be maintained by Lessee pursuant to Section 9 hereof.

(iii) Lessee shall fail to make any other payment or

perform or observe, in any material respect, any other covenant, condition or agreement to be performed or observed by it hereunder, or under any other agreement or instrument delivered by Lessee pursuant hereto or thereto, or Guarantor shall fail to perform or observe, in any material respect, any other covenant, condition or agreement to be performed or observed by it under the Guaranty, and such failure shall continue unremedied for a period of thirty (30) days after Lessee has been given notice thereof by Lessor.

(iv) Any representation or warranty made by Lessee herein, in any Certificate of Delivery and Acceptance or in any certificate furnished to Lessor in connection herewith or therewith or pursuant hereto or thereto, or any representation or warranty made by Guarantor in its Guaranty shall prove to be incorrect or misleading in any material respect when made, and which may have a materially adverse effect on Lessor;

(v) Lessee shall (i) apply for or consent to the appointment of a trustee, receiver, liquidator, custodian or the like of itself or its property, (ii) be unable, or admit in writing the inability, to pay its debts as they mature, (iii) make an assignment for the benefit of creditors, (iv) commence a voluntary case under a chapter of the Bankruptcy Reform Act of 1978, as amended, or file a petition or answer seeking reorganization or an agreement with creditors or to take advantage of any insolvency law or other law providing for the relief of debtors of an answer admitting the material allegations of a petition filed against it in any bankruptcy, reorganization or insolvency proceeding, or (v) take any corporate action for the purpose of effecting any of the foregoing; or

(vi) An involuntary case under a chapter of the Bankruptcy Reform Act of 1978, as amended, shall be commenced, or any other proceeding shall be instituted without the application, approval or

consent of Lessee seeking reorganization, dissolution, winding up, liquidation, a composition or arrangement with creditors, a readjustment of debts, the appointment of a trustee, receiver, liquidator, custodian or the like of such party or of all or any substantial part of its assets or other like relief or the issuance of a writ of attachment, execution or similar process in a material amount against any material part of the property of Lessee and Lessee shall fail to contest such proceeding in good faith or such proceeding shall continue for any period of thirty (30) consecutive days.

18. REMEDIES.

a. Generally. Upon the occurrence of any Event of Default and at any time thereafter so long as the same shall be continuing, Lessor may, at its option:

(1) proceed by appropriate court action or actions either at law or in equity to enforce performance by the Lessee of the covenants of this Lease or to recover damages for the breach thereof; or,

(2) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may personally, or through its agents, enter upon the premises of the Lessee or other premises, where any of such Units may be located, without judicial process if this can be done without breach of the peace and in accordance with due process of law, and take possession of all or any of such Units and possess the same free from any right of the Lessee or its successors or assigns or any sublessee to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such

termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is 30 days) and also to recover immediately from the Lessee as liquidated damages for loss of a bargain and not as a penalty whichever of the following amounts that the Lessor in its sole discretion shall specify, (i) the sum, with respect to each Unit, which represents (x) the excess of the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the Lease Term as to such Unit over the then present value of the Fair Market Rental Value of such Unit during such period (such present value to be computed in each case on the basis of a 10% per annum discount, compounded monthly for the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated) or (ii) an amount equal to the excess, if any, of the Casualty Value with respect to each Unit as of the Rental Payment Date on or closest to the date of termination over the then Fair Market Value of such Unit. In the event the Lessor shall have sold any Unit, the Lessee shall, if the Lessor shall so elect, pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Loss Value for such Unit as of the Rental Payment Date on or next preceding the date of termination over the net proceeds of such sale in lieu of collecting any amounts payable by the Lessee pursuant to clause (ii) of the preceding sentence with respect to such Unit.

b. Other Amounts and Expenses. In addition, Lessee shall be liable for any and all unpaid Supplemental Rent due hereunder before, after or during the exercise of any of the foregoing remedies and for all reasonable legal fees and other costs and expenses incurred by Lessor by reason of the occurrence of any Event of Default or the exercise of Lessor's remedies with respect thereto, including all costs and expenses

incurred by Lessor in connection with the return of any Unit in accordance with the terms hereof or the placing of such Unit in the condition required hereunder.

c. Other Rights and Remedies. Except as otherwise expressly provided above, no remedy referred to in this Section 18 is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to Lessor at law or in equity; and the exercise or beginning of exercise by Lessor of any one or more of such remedies shall not preclude the simultaneous or later exercise by Lessor of any or all such other remedies. Although the remedies specified herein are cumulative, they are not intended by the parties hereto to allow the Lessor to obtain multiple recoveries pursuant to Section 18 or pursuant to any other Section of this Lease. Any failure or delay on the part of Lessor in exercising any such rights, remedy or power or abandonment or discontinuance of steps to enforce the same, shall not operate as a waiver thereof or affect Lessor's right thereof to exercise the same and any single or partial exercise of any such right, remedy or power shall not preclude any other or future exercise thereof or the exercise of any other right, remedy or power. No express or implied waiver by Lessor of any Event of Default shall in any way be, or be construed to be, a waiver of any future or subsequent Event of Default.

19. REPRESENTATIONS AND WARRANTIES. Lessee represents and warrants to Lessor that:

(i) Lessee is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware.

(ii) Lessee has full power and authority to execute, deliver and perform this Lease, the Assignments of Purchase Order and the Certificates of Delivery and Acceptance and to own or lease its



properties and to carry on its business as now conducted and as contemplated hereby.

(iii) This Lease has been duly authorized, executed and delivered by Lessee and constitutes the legal, valid and binding obligations of Lessee, enforceable against it in accordance with the terms hereof and thereof, subject, as to enforceability of remedies, to limitations imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the enforcement of creditors' rights generally and to general principles of equity.

(iv) The Certificates of Delivery and Acceptance have each been duly authorized by Lessee and, when executed and delivered by Lessee, will constitute the legal, valid and binding obligation of Lessee, enforceable against it in accordance with the terms thereof, subject, as to enforceability of remedies, to limitations imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the enforcement of creditors' rights generally and to general principles of equity.

(v) Neither the execution, delivery or performance by Lessee of this Lease, the Certificates of Delivery and Acceptance, or the other instruments contemplated herein and therein, nor compliance with the terms and provisions thereof, conflicts or will conflict with or will result in a breach or violation of any of the terms, conditions or provisions of any law, governmental rule or regulation or the charter documents, as amended, or bylaws, as amended, of Lessee or any order, writ, injunction, or decree of any court or governmental authority against Lessee or by which it or any of its properties is bound or any indenture, mortgage or contract or other agreement or instrument to which Lessee is a party or by which it or any of its properties is bound, or constitutes or will constitute a default thereunder or will result in the imposition of any lien not permitted by this Lease upon any of its properties.

(vi) Except for those suits or proceedings previously disclosed to Lessor, there are none pending or, to the knowledge of Lessee, threatened in any court or before any regulatory commission, board or other governmental administrative agency against or affecting Lessee which could have a material adverse effect on its ability to fulfill its obligations hereunder or under the Certificates of Delivery and Acceptance or the other instruments contemplated herein or therein.

(vii) Lessee's principal place of business and chief executive office (as such terms are used in the Uniform Commercial Code) is located in West Virginia.

20. REPORTS. Lessee shall give to Lessor the following:

(i) Within a reasonable amount of time after receiving a written request therefor, Lessee shall provide Lessor with the whereabouts of the Units so as to permit the Lessor or its agent access to the Units to inspect same.

(ii) Promptly after the same shall have come to the attention of a responsible officer of Lessee, notice of any claim, demand, action, legal proceeding or dispute that (A) involves the rights of Lessor hereunder, (B) involves the interpretation of any provision of this Lease or (C) directly or indirectly affects the tax or other liability or rights of Lessor or Lessee hereunder.

(iii) At least sixty (60) days prior thereto, notice of any change in Lessee's name and any change in the location of the principal place of business or chief executive office of Lessee.

(iv) Promptly after the same shall have come to the attention of a responsible officer of Lessee, notice of the occurrence of any Event of Default and any event which, but for the lapse of time or the giving of notice or both, would be an Event of Default.

For purposes of this Section 20, a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of Lessee contained in this Lease, any corporate officer or other representative of Lessee who, in the normal performance of his operational responsibilities, would have knowledge of such matter and the requirements of this Lease with respect thereto.

21. INDEMNITY.

a. Generally. Lessee shall indemnify and hold Lessor harmless from, and defend Lessor against, any and all claims relating to or any way arising out of this Lease or the possession, preparation, use, sublease, delivery, installation, operation, control, maintenance, or disposition of any Unit, including, without limitation, any claim arising by reason of latent and other defects, whether or not discoverable by Lessor or Lessee, or upon any infringement of any patent, copyright or similar right, or arising under the strict liability doctrine in tort or arising by reason of the existence, at the time Lessor takes possession of a Unit pursuant to Section 16 hereof, or any lien or right of third parties against such Unit, except, as to all of the foregoing, those claims relating to or arising out of Lessor's breach of this Lease or any Lessor Obligations. Lessor will make available to Lessee all of Lessor's rights under any similar indemnification from any Seller or manufacturer of the Leased Equipment. This indemnity, and all other indemnities of Lessee herein which arise from acts or events which occur prior to expiration or early termination of the Lease Term and return of the Leased Equipment pursuant to Section 16 hereof or purchase of the Leased Equipment pursuant to Section 15 hereof, shall survive the expiration or earlier termination of this Lease; provided, however, that the indemnity contained in this Section 21 shall not extend to any Imposition described in Section 11.a. Except in the Event of Default, Lessor's right to indemnity with regard to any particular Unit or Units shall not apply to any claim arising after Lessor has taken possession of said Unit or Units or Lessee has otherwise surrendered possession of same.

b. After-tax Basis. The indemnity amounts payable under Section 21.a. hereof shall be computed on an "after-tax" basis, so that any such indemnity payment shall be in an amount which, when reduced by the increase in the federal, state and local tax liability of the Lessor based upon or measured by Lessor's net income as a result of such payment, and after taking into account any present or future tax benefits to Lessor arising from such payment or the circumstances giving rise to such payment, shall equal the amount of the claim in respect of which such indemnity is payable.

c. Control of Litigation; Subrogation. Provided no Event of Default shall have occurred and be continuing, Lessee shall have the right to control litigation related to any claim against Lessor for which Lessee would be liable under this Section 21, using legal counsel selected by Lessee and reasonably acceptable to Lessor, and to determine the settlement of claims; provided that (i) Lessor shall have reasonably determined that the action to be taken shall not result in the forfeiture or loss of any Unit, (ii) Lessee agrees on the basis of information then available that the claim referred to in this Section 21 is one against which the Lessee is obligated to indemnify Lessor under this Section 21, and (iii) such litigation is diligently conducted by Lessee. To the extent that Lessee has made an indemnity payment to Lessor pursuant to this Lease, Lessee shall be subrogated to Lessor's rights in the affected transaction. Any settlement of claims pursuant to this Section 21 shall be subject to approval by Lessor.

22. PAYMENT TERMS. Notwithstanding any provisions hereof to the contrary, any payment required under this Lease which is due on a day which is not a Business Day may be paid on the next day which is a Business Day. All payments to be made hereunder shall be made by wire transfer in accordance with the following instructions, or such other instructions as are delivered from time to time by one party to another party in accordance with Section 26 hereof:

If to Lessor: BarclaysAmerican/Leasing, Inc.  
c/o Wachovia Bank and Trust Company  
South Tryon Street Office  
Charlotte, North Carolina  
Account Number 9008370

If to Lessee: Borg-Warner Chemicals, Inc.  
c/o \_\_\_\_\_  
International Center  
Parkersburg, W. Va.  
Account Number \_\_\_\_\_

23. LESSOR'S RIGHTS AND NONPAYMENT. If Lessee fails to make any payment to a party other than Lessor in connection with this Lease, or fails to perform or comply with any of its agreements contained herein, Lessor may, but shall not be required to, make such payment or perform or comply with such agreement, and the amount of such payment and the amount of the reasonable expenses incurred by Lessor in connection with such payment or the performance or compliance with such agreement, as the case may be, together with interest thereon at the Default Interest Rate, shall be deemed Supplemental Rent, payable by Lessee on demand. Any nonpayment of Rent or other amounts due under this Lease shall result in the obligation on the part of Lessee promptly to pay interest equal to the Default Interest Rate on the overdue Rent or such other amount for the period of time during which it is overdue.

24. FURTHER ASSURANCES. Lessee shall from time to time execute and deliver such further documents and assurances and take such further actions as Lessor may reasonably request (i) in order to carry out the intent and purposes of this Lease or (ii) to establish and protect Lessor's title to any Unit or the rights and remedies granted or intended

to be granted in favor of Lessor under the terms of this Lease, an Assignment of Purchase Order or a Certificate of Delivery and Acceptance.

25. QUIET ENJOYMENT. Lessor covenants that Lessee and its permitted successors, sublessees and assigns, so long as no Event of Default has occurred and is continuing hereunder, may and shall peaceably and quietly have, hold, possess, use and enjoy the Units as provided in this Lease without suit, molestation or interruption by Lessor or by reason of Lessor's acts.

26. NOTICES. All notices herein required shall be given not later than the date required hereunder and shall be deemed to have been duly given when signed by an appropriate officer or other representative of Lessee or Lessor specifically authorized by Lessee or Lessor, respectively, and either delivered to an officer of Lessee or Lessor, or mailed prepaid by certified mail, return receipt requested, and addressed to the address indicated below for such party or to such other address as such party may designate in writing pursuant hereto:

If to Lessor:   BarclaysAmerican/Leasing, Inc.  
                  201 South Tryon Street  
                  P. O. Box 31217  
                  Charlotte, North Carolina 28231  
                  Attention: Director of Credit and Administration

If to Lessee:   Borg-Warner Chemicals, Inc.  
                  International Center  
                  Parkersburg, W. Va. 26101  
                  Attention: \_\_\_\_\_

27. GENERAL. This Lease shall be governed by the laws of the State of North Carolina and constitutes the entire lease agreement between the parties. No other agreement, oral or written, express or implied, has been made between the parties hereto with respect to the subject matter hereof. If any provision of this Lease or the application thereof to any party or circumstances is held invalid or unenforceable, the remainder of this Lease and the application of such provision to other parties or circumstances shall not be affected thereby, and to this end the provisions of this Lease are declared severable. No term or provision of this Lease may be changed, waived, discharged, or terminated orally. Any other change, waiver, discharge, or termination can be accomplished only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought.

28. TAX INDEMNITY.

a. Intended Tax Benefits. In entering into this Lease and the transactions contemplated hereby, it is the intention of Lessor and Lessee that such transactions will result in making available to Lessor the following tax benefits (the "Tax Benefits") for the purpose of determining its liability for income taxes imposed by the federal government of the United States based on the fact that, in part, the Lease constitutes a true lease (for Federal Tax Purposes) under which Lessor will be considered the owner of each Unit and lessor of each Unit under the Lease, and Lessee will be considered the lessee of each Unit under the Lease for federal tax purposes:

(1) With respect to Units having a Delivery Date prior to January 1, 1987 Lessor will be entitled to Accelerated Cost Recovery System deductions for "5-year property" aggregating the full amount of Lessor's Cost in each such Unit under the Internal Revenue Code of 1954, Section 168 prior to amendment pursuant to the Tax Reform Act of 1986 and with respect to Units having Delivery Date after

December 31, 1986, will be entitled to Accelerated Cost Recovery system deductions for "7-year property" aggregating the full amount of Lessor's Cost in each such Unit under the Internal Revenue Code of 1954, Section 168, as amended in the Tax Reform Act of 1986 (hereafter such deductions referred to collectively as "Recovery Deductions");

(2) All amounts taken into account with respect to the Lease in computing Lessor's gross income will be treated as income or loss derived from or allocable to sources within the United States;

(3) There will not be included in the gross income of Lessor any part of the cost of any improvement, modification or addition to any Unit made by Lessee whether or not required under the Lease; and

(4) Lessor's Federal tax rates are 46% for 1986 calendar year, 40% for 1987 calendar year and 34% thereafter.

b. Covenants by Lessee. Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or fail to take any action or file or fail to file any returns, certificates or other documents where any such action, failure to act, filing or failure to file would be inconsistent with the foregoing, which would (i) increase the amount of Rent with respect to any Unit required to be taken into income by Lessor over the amounts specified to be payable under the Lease on the dates due thereunder with respect to such Unit, or (ii) be inconsistent with Lessor's claim to be the owner and lessor of the Units for federal income tax purposes. Lessee and such other corporations shall file such returns, take such action, execute such documents and keep and make available for inspection and copying by Lessor such records (other than Lessee's or its direct or indirect parent's or subsidiaries' corporate income tax returns), or cause the same to be accomplished, all as may be reasonably requested by Lessor to facilitate accomplishment of



the intent hereof. The covenants made by Lessee in this Section 28.b. refer solely to such acts or failures to act with respect to, its federal income tax returns and its assertions or statements made to the Internal Revenue Service ("Service") with respect thereto and corresponding state and local income tax returns for the State of \_\_\_\_\_ or any other jurisdiction where the Lessee files and where such jurisdiction has tax provisions similiar to relevant Federal tax provisions.

c. Representations and Warranties by Lessee. In connection with the foregoing, Lessee represents and warrants that: (A) on the Delivery Date of any Unit, such Unit will not have been used by any person so as to preclude "the use of such property" within the meaning of Section 48(b) of the Internal Revenue Code of 1954, as amended ("Code") from commencing with Lessor; (B) as of the Delivery Date of any Unit, no Recovery Deductions will have been claimed by any person with respect thereto; (C) throughout the Lease Term of any Unit, the Unit will constitute "Section 38 property" within the meaning of Section 48 of the Code. (D) On the Delivery Date of any Unit having a Delivery Date prior to January 1, 1987, such Unit will constitute "recovery property" and "5-year property" within the meaning of Sections 168(c)(1) and 168(c)(2)(B) of the Code, prior to amendment by the Tax Reform act of 1986, for purposes of computing Recovery Deductions; (E) on the Delivery Date of any Unit having a Delivery Date after December 31, 1986, such unit will constitute "7 year property" within the meaning of Section 168 of the Code, after amendment by the Tax Reform Act of 1986, for purposes of computing Recovery Deductions; (F) no "non-severable improvement", within the meaning of Section 4(4) of Rev. Proc. 75-21, 1975-1 C.B. 715, as modified by Rev. Proc. 79-48, 1979-2 C.B. 529, will be required in order to complete the Unit for its intended use by Lessee; (G) the Leased Equipment will be used during the Lease Term not predominantly outside the United States within the meaning of Section 48(a)(2)(A) of the Code; and (H) as of the date hereof it is a reasonable assumption that each Unit shall have (x) at least 20% of its estimated useful life remaining

at the expiration of its Lease Term (y) a fair market value at the expiration of its Lease Term (such fair market value being determined without including in such value any increase or decrease for inflation or deflation during such Lease Term and determined after subtracting from such value the cost, if any, for removal and redelivery of possession to the Lessor at the expiration of such Lease Term) equal to at least twenty percent (20%) of the Lessor's Cost of such Unit and (z) a commercially feasible use, at the expiration of its Lease Term, to the Lessor (or a purchaser or lessee therefrom unrelated to the Lessee), within the meaning of Revenue Procedure 75-21, 1975-1 Cum. Bull. 715, as modified in Revenue Procedure 75-28, 1975-1 Cum. Bull. 752 and Revenue Procedure 76-30, 1976-2 Cum. Bull. 647.

d. Indemnification

(1) Loss of Tax Benefits. Except as otherwise provided in this Section 27, if Lessor shall lose, shall not have the right to claim, shall suffer a deferral or disallowance of or shall be required to recapture all or any portion of the Tax Benefits or shall have to pay any interest, penalties or additions to tax for purposes of federal income taxes with respect to any Unit, (a "Loss") by reason of any act or failure to act by Lessee, without limitation, the use of any Unit by Lessee in a manner inconsistent with the Lessor's claim or entitlement to any of the Tax Benefits, any failure of Lessee to act in accordance with the terms of this Lease, the incorrectness, as to law or fact, of any representation, warranty or covenant made by Lessee in this Lease, including, without limitation, the representations and warranties made in Sections 27b and 27c above, or by reason of the promulgation of a regulation or the issuance of a published administration ruling under the Code which relates to the amendment of the Code by the Tax Reform Act of 1986, an amendment enacted by Congress as a technical correction to the Tax Reform Act of 1986 or an amendment by Congress which affects the Tax Benefit enumerated in Section 28.a.(4) then the Lessee shall pay to the Lessor as an indemnity after written notice to the Lessee by the Lessor

of such Loss, an amount (as Supplemental Rent payable pro rata over the term of the Lease) which, after subtracting the amount of all Federal, state and local income taxes payable by the Lessor in respect of the receipt thereof, shall be sufficient to yield to the Lessor the same periodic net after-tax cash flows as the Lessor would have realized in respect of the Lease if such loss had not occurred. The Lessee shall also pay to the Lessor, as Supplemental Rent an amount which, after subtracting the amount of all Federal, state and local income taxes payable by the Lessor in respect of the receipt thereof, shall equal any interest, penalties or additions to tax (including any additions to tax because of underpayment of estimated tax) payable by the Lessor in respect of such Loss, less the amount of any decrease in the Federal, state and local income taxes of the Lessor that would result from the claiming of allowable deductions from gross income with respect to such interest, penalties or additions to tax.

(2) Inclusion. If for any reason whatsoever all or any part of the cost of any improvement, repair or replacement made by the Lessee under and pursuant to the terms of the Lease or otherwise to any Unit is required to be included in Lessor's gross income for federal, state or local income tax purposes for any period prior to the Expiration Date for such Unit ("Inclusion") and Lessor is not entitled to currently deduct such cost, the Lessee will pay Lessor on demand (A) an amount which, after deduction of all taxes required to be paid by Lessor in respect of the receipt thereof under the laws of any federal, state or local government or taxing authority in the United States, shall be equal to the sum of the net additional federal, state or local income taxes payable by Lessor from time to time as a result thereof, plus (B) the amount of any interest, penalties or additions to taxes payable as a result thereof; it being understood that the amount payable pursuant to this sentence shall not be due and payable by Lessee prior to the payment by Lessor of such additional federal, state or local income taxes. If Lessor realizes a Tax Benefit as a result of any improvement, repair or replacement in

respect of which Lessee is required to indemnify Lessor under this Section 28.d.(2) , Lessor shall pay Lessee an amount equal to such Tax Benefit (plus additional tax savings, if any, realized by Lessor as a result of the payment of such amount or the payment of such tax savings) when, as, if, and to the extent realized; provided, however, such payment shall not be offset against Rent. The Lessor agrees to take all action necessary and appropriate to realize all Tax Benefits and savings available to it as a result of any improvement, repair or replacement in respect of which the Lessee is required to indemnify the Lessor under this Section 28.d.(2) , of which the Lessor is aware.

(3) Determination of Loss or Inclusion. The amount of Loss or Inclusion shall be determined by mutual agreement of Lessor and Lessee. Lessor shall notify Lessee in writing of Lessor's determination of such sum, and provide a statement describing in reasonable detail the manner in which such determination was made. Within thirty (30) days following the Lessee's receipt of such determination, the Lessee may demand that the accounting firm that regularly prepares the Lessor's certified financial statements verify whether such determination of the Lessor is mathematically accurate and based on reasonable assumptions including those assumed by the Lessor at the outset of this transaction and contained in Section 28.a. Such accounting firm shall be requested to make its determination within thirty (30) days. If such accounting firm shall determine that the Lessor's determination is unreasonable or mathematically inaccurate, then such firm shall determine what it believes to be the appropriate computation. Upon payment of such sum pursuant to this Section 28 as determined by the Lessor or its accounting firm, whichever is applicable, the Casualty Values shall be adjusted accordingly. All costs and expenses incurred by the Lessor in connection with such accounting firms determination shall be paid or reimbursed by the Lessee; provided, however, that if the conclusions reached by such accounting firm result in a variation from the Lessor's determination which is favorable to the Lessee, then the Lessor shall be responsible for such costs and expenses.

(4) Limitations on Liability. Notwithstanding the foregoing, Lessee shall not be required to make any indemnity payment to Lessor under this Section 28 if Lessor shall have suffered a Loss solely as a result of the occurrence of any one or more of the following: (A) loss of, or damage to, such Unit, if Lessee shall have paid to Lessor the applicable Casualty Value; (B) any voluntary or involuntary transfer or other disposition by Lessor of any interest in such Unit, but excluding, however, any transfer or disposition resulting from the exercise by Lessor of remedies provided for in Section 18 upon an Event of Default by Lessee; (C) the failure of Lessor timely or properly to claim all or any portion of the Tax Benefits in its federal income tax return for the appropriate year; (D) the failure of Lessor to have sufficient income to utilize the Tax Benefits; (E) a disqualifying change in the nature of Lessor's business or the liquidation of Lessor; (F) Lessor not being engaged in a trade or business or holding depreciable property for the production of income as required under Section 167(a) or 168(a) of the Code for any portion of Lessor's taxable year within which the Delivery Date of Unit occurs; (G) a filing by Lessor of an election under Sections 108 and 1017 of the Code to reduce Lessor's basis in Unit; (H) the making by Lessor of the election described in section 48(q) (4) of the Code; or (I) the failure of the Lessor to comply with Section 28.d.(5) hereof.

(5) Adjustment and Contest Right. If an auditing agent of the Internal Revenue Service proposes or makes an adjustment which, if sustained, would result in a Loss or Inclusion to which the Lessee may be required to indemnify pursuant to the provisions of this Section 28 hereof, Lessor hereby agrees (A) promptly to notify Lessee in writing of any such adjustment (which notice shall include all relevant information relating to such adjustment which may be particularly within the knowledge of Lessor), (B) to advise Lessee of all action taken or proposed to be taken by Lessor, in respect of any such

adjustment, (C) not to enter into any settlement or agreement with the Internal Revenue Service with respect to any such adjustment, or to make any payment of the additional federal income tax assessed as a result of any such adjustment for at least 45 days after the giving of such notice (provided, however, that if Lessor determines that a 45-day delay would unreasonably jeopardize its position, then Lessor shall, in such notice, notify Lessee of such shorter reasonable period after which Lessor intends to so act), and (D) if (1) Lessee shall within 45 days after receipt of such notice request in writing that such adjustment be contested (which request is accompanied by an opinion of tax counsel selected by Lessee and satisfactory to Lessor to the effect that there exists a reasonable basis for contesting such adjustment), (2) Lessee agrees that the adjustment to be contested is one for which the Lessee is obligated to indemnify Lessor under this Section 28, and (3) Lessee agrees to pay on demand all reasonable out-of-pocket expenses incurred by Lessor in connection with contesting such adjustment (including, without limitation, reasonable attorneys' fees and disbursements), then Lessor shall take such action in connection with contesting any such adjustment (including such judicial proceedings and appeals from any lower court decision) as Lessee shall reasonably request in writing from time to time; provided, however, that at any time after having received such initial request from Lessee, Lessor may, at its sole option, either pay the additional federal income tax assessed as a result of such adjustment and sue for a refund in the appropriate United States District Court or the United States Court of Claims as Lessor shall elect or contest such proposed adjustment in the United States Tax Court, considering however, in good faith such request as Lessee shall make concerning the most appropriate forum in which to proceed, and provided, further, that if Lessor agrees to waive indemnification under this Section 28, Lessor may refuse the Lessee's request that such adjustment be contested. If, preliminary to a suit for refund, the Lessor pays the additional federal income tax assessed together with any related interest and penalties, the Lessee shall immediately reimburse Lessor in full for that portion

paid by the Lessor for which the Lessee has indemnified the Lessor hereunder. If the Lessee does not request Lessor to contest such adjustment or proposed adjustment within 45 days after Lessor has given the Lessee notice of such adjustment or if tax counsel does not render the written opinion described above within the prescribed period, and the Lessor accepts such adjustment the Lessee shall indemnify Lessor in the manner set forth in this Section 28. Upon receipt by Lessor of a refund (including interest, if any,) of any tax paid by it in respect of which the Lessee has reimbursed Lessor as provided for in this Section, such refund to the extent reimbursed by the Lessee shall be paid by Lessor to the Lessee including any related interest received by the Lessor.

e. Definition of Lessor. The term "Lessor," solely for purposes of any indemnity contained herein or any verification of any such indemnity payment shall include any affiliated group, within the meaning of Code Section 1504, of which Lessor is a member if consolidated returns are filed for such affiliated group for federal income tax purposes, or the comparable definition under a combined report for state income tax purposes.

f. Option to Terminate. (See page 42(a))

IN WITNESS WHEREOF, Lessor and Lessee have caused this Lease to be duly executed as of the day and year first above written.

LESSOR:  
[CORPORATE SEAL]  
ATTEST:

Beverly W. Henty  
Assistant Secretary

BARCLAYSAMERICAN/LEASING, INC.

By: 

Title: Vice President

LESSEE:  
[CORPORATE SEAL]  
ATTEST:

J.D. Treacy  
Assistant Secretary

BORG-WARNER CHEMICALS, INC.

By: 

Title: Vice-President Finance

f. Option to Terminate. If the Lessor shall notify the Lessee pursuant hereto of an indemnity payment as a result the promulgation of a regulation or the issuance of a published administrative ruling under the Code which relates to the amendment of the Code by the Tax Reform Act of 1986, an amendment enacted by Congress as a technical correction to the Tax Reform Act of 1986 or an amendment by Congress which affects the Tax Benefit enumerated in Section 28.a.(4) and should the Lessee find the indemnity payment to be unacceptable, Lessee shall have the option to terminate the Lease hereupon and purchase all of the Units for the greater of Fair Market Value, as determined in accordance with Section 15 herein, or Casualty Value as adjusted pursuant to Section 28.d.(3).

ALL  
[Signature]



COUNTY OF WOOD ) ss.

Before me a notary public in and for the said county appeared R. L. Smith and H. D. Franky to me personally known and who being first duly sworn, stated that they were respectively the V.P. Finlanden and Asst. Secretary of Borg-Warner Chemicals, Inc., and that they signed the foregoing document as the duly authorized act and deed of said corporation

[Notarial Seal]

NOTARY PUBLIC

My Commission expires:

May 23, 1987

STATE OF NORTH CAROLINA )  
 ) ss.  
COUNTY OF MECKLENBURG )

Before me a notary public in and for the said county appeared W.D. Thompson and Beverly W. White to me personally known and who being first duly sworn, stated that they were respectively the Vice President and Assistant Secretary of Barclays American/Leasing, Inc., and that they signed the foregoing document as the duly authorized act and deed of said corporation

[Notarial Seal]

NOTARY PUBLIC

My Commission expires:

12-8-88

DEFINITIONS

"Assignment of Purchase Order" shall mean an assignment to Lessor of Lessee's interest in Purchase Orders issued from Lessee to Vendor. The assignment shall be acknowledged by Vendor and shall be substantially in the form of Exhibit I annexed hereto.

"Basic Lease Term Commencement Date" shall mean May 10, 1987.

"Basic Lease Expiration Date" shall mean May 10, 2002.

"Basic Lease Rate Factor" shall mean 0.91837%.

"Basic Rent" for any Unit shall have the meaning as set forth in Section 5 hereof.

"Big 8 Accounting Firm" shall mean one of the following accounting firms: Arthur Anderson & Co., Arthur Young & Company, Price Waterhouse, Deloitte Haskins & Sells, Peat Marwick Mitchell & Co., Touch Ross & Co., Ernst & Whinney, Coopers and Lybrand.

"Bill of Sale" shall mean a bill of sale from Vendor to Lessor substantially in the form of Exhibit F annexed hereto.

"Business Day" shall mean a day on which banks are open for the conduct of banking business in the City of Charlotte, North Carolina and the City of Parkersburg, West Virginia.

"Casualty Occurrence" shall mean any of the events referred to in Section 12.b. hereof.

"Casualty Loss Payment Date" shall have the meaning set forth in Section 12.c. hereof.

"Casualty Loss Value" for any Unit suffering a Casualty Occurrence shall mean an amount equal to that percentage of Lessor's Cost of such Unit set forth as a casualty loss factor in Exhibit C annexed hereto.

"Certificate of Delivery and Acceptance" shall mean a Certificate of Delivery and Acceptance substantially in the form of Exhibit D annexed hereto and covering the Unit or Units listed therein, executed by Lessee and acknowledged by Lessor.

"Claims" shall mean any lien, liability, obligation, loss, damage, penalty, claim, action, suit, cost, expense, or disbursement (including without limitation, reasonable legal fees and expenses) of any kind or nature.

"Daily Lease Rate Factor" shall mean .03061%.

"Default Interest Rate" shall mean the per annum rate equal to 18%.

"Delivery Date" for any Unit, shall mean the date on which such Unit is delivered and accepted hereunder.

"Event of Default" shall mean any of the events referred to in Section 17 hereof.

"Extended Term" shall have the meaning as set forth in Section 14 hereof.

"Extended Term Expiration Date" shall mean either May 10, 2003; May 10, 2004; or May 10, 2005..

"Extended Term Rent" shall have the meaning of Fair Market Rental Value as set forth in Section 14 hereof.

"Fair Market Rental Value" for any Unit shall mean an amount equal to the rental which would be obtained for such Unit in an arm's-length transaction between an informed and willing lessee (other than Lessee) and an informed and willing lessor under no compulsion to lease in a transaction taking place at a major market for such Unit and shall exclude the Rental Value of any additions made to a Unit by Lessee which are removable by Lessee pursuant to Section 8. Fair Market Rental Value shall be determined on an "as-is, where-is" basis. Costs of removal from the location of current use shall not be a deduction from such value.

"Fair Market Value" shall mean an amount equal to the value of any Unit which would be obtained in an arm's-length transaction between an informed and willing buyer (other than Lessee) and an informed and willing seller under no compulsion to sell. Fair Market Value shall be determined on the basis that such Unit is maintained in accordance with terms hereof and shall exclude the Value of any additions made to a Unit which are removable by Lessee pursuant to Section 8, except in the event such determination is made pursuant to Section 17 hereof in which event such determination shall be on an "as-is, where-is" basis. Costs of removal from the location of current use shall not be a deduction from such value.

"First Delivery Date" shall mean the Delivery Date of the first Unit to be delivered and accepted hereunder.

"First Extended Lease Payment Date" shall mean either May 10, 2002; May 10, 2003 or May 10, 2004.

"First Extended Term Commencement Date" shall mean either May 10, 2002, May 10, 2003, or May 10, 2004.

"First Funding Date" shall mean the first Funding Date.

"First Rental Payment Date" shall mean May 10, 1987.

"Funding" shall mean the payment of Lessor's cost by Lessor pursuant to Section 3 hereof on a Funding Date.

"Funding Date" shall mean a date designated by Lessee in written notice to Lessor which shall be at least five (5) days after the date Lessor receives such notice upon which Lessor shall pay Lessor's Cost to Vendor with respect to each Unit purchased and leased hereunder. For purposes of this transaction, Funding Date for any specific Unit of Equipment shall be any one of the following dates: October 30, 1986; November 28, 1986; December 30, 1986; January 30, 1987; February 27, 1987; March 30, 1987; or April 30, 1987.

"Guarantor" shall mean Borg-Warner Corporation.

"Guaranty" shall mean a guaranty from Borg Warner Corporation substantially in the form of Exhibit G annexed hereto.

"Initial Term" for any Unit shall mean the term of this Lease provided for in Section 4.a. hereof.

"Interim Rent Date" shall mean May 10, 1987.

"Last Basic Rental Payment Date" shall mean April 10, 2002.

"Last Extended Term Rental Payment Date" shall mean either April 10, 2003, April 10, 2004 or April 10, 2005.

"Lease", "herein", "hereunder" or other like words, unless the context otherwise requires, shall mean and include this Equipment Lease Agreement, as the same may from time to time be supplemented or amended.

"Leased Equipment" shall mean collectively all Units subject to this Lease at any given time.

"Lessor's Cost" for any Unit shall mean the actual cost thereof to Lessor, including the cost specified in Vendor's invoice therefor and any applicable state and local sales and use taxes paid by Lessor. Lessor's Cost with respect to the Leased Equipment shall be the sum of the amounts of Lessor's Cost with respect to all the Units. Lessor's Cost with respect to the Leased Equipment shall in no event exceed \$7,000,000.

"Lessor Obligations" shall mean (a) Lessor's obligation to purchase each Unit on its Delivery Date and pay Lessor's Cost of each Unit on its Funding Date, upon satisfaction of all conditions precedent thereto contained in Section 3.b. hereof, (b) Lessor's obligation to allow Lessee peaceable and quiet enjoyment of the Units as provided in Section 24 hereof, and (c) if and when Lessor is required to transfer title to such Unit to Lessee, such title will be free and clear of all liens and encumbrances which result from claims against Lessor.

"Permitted Liens" shall mean (a) the rights of Lessor, (b) liens or encumbrances which result from claims against Lessor not related to the ownership of the Units or any interest therein, (c) liens for taxes either not yet due or being contested in good faith and by appropriate proceedings diligently conducted so long as such proceedings shall stay the enforcement thereof and the sale or forfeiture of any unit or any part thereof or interest therein and (d) undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or employees' liens or other like liens arising in the ordinary course of business and securing obligations which are not delinquent or which shall have been bonded or the enforcement of which shall have been suspended (but only for the duration of such suspension).

"Purchase Agreement" shall mean any purchase agreements or purchase orders for a Unit.

"Rent" shall mean Basic Rent, Extended Term Rent and Supplemental Rent collectively.

"Rental Payment Dates" shall mean the 10th day of each month of the Lease Term commencing with the First Rental Payment Date and shall include the Last Rental Payment Date.

"Supplemental Rent" shall mean all amounts, liabilities and obligations which Lessee assumes or agrees to pay hereunder to Lessor or others, except Basic Rent.

"Termination Date" shall have that meaning set forth in Section 18 hereof.

"Unit" shall mean, unless the context otherwise requires, the equipment described as a "Unit" in Exhibit B annexed hereto and leased hereunder.

"Vendor" shall mean a railcar manufacturing company that sells a Unit to Lessor.

EXHIBIT B  
TO LEASE

DESCRIPTION OF UNITS

<u>Manufacturer's Names</u>	<u>No. of Units</u>	<u>Description</u>	<u>Marks and Identification Numbers</u>
PLM, Inc.	179	3 Compartment LO Hopper Cars	BWCX 1306-1484

# EXHIBIT C

The Casualty Value for a Unit as of any date, shall be an amount equal to the product of the (i) Lessor's Cost of such Unit and (ii) the percentage indicated below opposite the date indicated below next following the Casualty Occurrence.

## CASUALTY LOSS VALUE

<u>CASUALTY LOSS PAYMENT DATE</u>	<u>CASUALTY LOSS VALUE</u>	<u>CASUALTY LOSS PAYMENT DATE</u>	<u>CASUALTY LOSS VALUE</u>
05/10/1987	100.3942991	09/10/1990	93.0387132
06/10/1987	100.4060336	10/10/1990	92.7788798
07/10/1987	100.3903102	11/10/1990	92.5110262
08/10/1987	100.3644894	12/10/1990	92.2385906
09/10/1987	100.3350817	01/10/1991	91.9615447
10/10/1987	100.3020667	02/10/1991	91.6763720
11/10/1987	100.2588572	03/10/1991	91.3865103
12/10/1987	100.2119629	04/10/1991	91.0919306
01/10/1988	98.1260250	05/10/1991	90.7910534
02/10/1988	98.0651319	06/01/1991	90.4893466
03/10/1988	98.0009366	07/10/1991	90.1828486
04/10/1988	97.9334186	08/10/1991	89.8754862
05/10/1988	97.8596389	09/10/1991	89.5632975
06/10/1988	97.7737541	10/10/1991	89.2462527
07/10/1988	97.6844125	11/10/1991	88.9282788
08/10/1988	97.5828695	12/10/1991	88.6054120
09/10/1988	97.4777731	01/10/1992	88.2776235
10/10/1988	97.3691010	02/10/1992	87.9488391
11/10/1988	97.2481081	03/10/1992	87.6150959
12/10/1988	97.1234414	04/10/1992	87.2763632
01/10/1989	96.9950781	05/10/1992	86.9343688
02/10/1989	96.8542722	06/10/1992	86.5912905
03/10/1989	96.7096699	07/10/1992	86.2431651
04/10/1989	96.5612478	08/10/1992	85.8939179
05/10/1989	96.4051052	09/10/1992	85.5395855
06/10/1989	96.2394022	10/10/1992	85.1801362
07/10/1989	96.0697488	11/10/1992	84.8194952
08/10/1989	95.8904515	12/10/1992	84.4536985
09/10/1989	95.7071198	01/10/1993	84.0827141
10/10/1989	95.5197288	02/10/1993	83.7104666
11/10/1989	95.3225841	03/10/1993	83.3329915
12/10/1989	95.1212947	04/10/1993	82.9502566
01/10/1990	94.9158349	05/10/1993	82.5639878
02/10/1990	94.7005097	06/10/1993	82.1763613
03/10/1990	94.4809273	07/10/1993	81.7834123
04/10/1990	94.2570614	08/10/1993	81.3890643
05/10/1990	94.0263659	09/10/1993	80.9893521
06/10/1990	93.7878303	10/10/1993	80.5842425
07/10/1990	93.5448941	11/10/1993	80.1776588
08/10/1990	93.2940421	12/10/1993	79.7656352

CASUALTY LOSS  
PAYMENT DATE

01/10/1994  
02/10/1994  
03/10/1994  
04/10/1994  
05/10/1994  
06/10/1994  
07/10/1994  
08/10/1994  
09/10/1994  
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12/10/1997

CASUALTY LOSS  
VALUE

79.3481381  
78.9290903  
78.5045255  
78.0744097  
77.6404670  
77.2068195  
76.7675648  
76.3285726  
75.8839401  
75.4336324  
74.9835188  
74.7276962  
74.0661291  
73.6046866  
73.1374649  
72.6644284  
72.1881652  
71.7138833  
71.2337429  
70.7555598  
70.2714941  
69.7815094  
69.2934211  
68.7993889  
68.2993761  
67.8011977  
67.2970130  
66.7867849  
66.2739657  
65.7629019  
65.2457520  
64.7303306  
64.2087963  
63.6811113  
63.1550896  
62.6228894  
62.0844725  
61.5476526  
61.0045874  
60.4552384  
59.9030564  
59.3523863  
58.7953853  
58.2398663  
57.6779865  
57.1097064  
56.5428386  
55.9695397

CASUALTY LOSS  
PAYMENT DATE

01/10/1998  
02/10/1998  
03/10/1998  
04/10/1998  
05/10/1998  
06/10/1998  
07/10/1998  
08/10/1998  
09/10/1998  
10/10/1998  
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10/10/2001  
11/10/2001  
12/10/2001

CASUALTY LOSS  
VALUE

55.3897700  
54.8113415  
54.2264105  
53.6349368  
53.0403696  
52.4470521  
51.8471400  
51.2484446  
50.6431213  
50.0311291  
49.4202789  
48.8027257  
48.1784280  
47.5551961  
46.9251846  
46.2883516  
45.6481447  
45.0089053  
44.3627872  
43.7176001  
43.0654977  
42.4064371  
41.7482274  
41.0830217  
40.4107769  
39.7393015  
39.0607482  
38.3750731  
37.6857221  
36.9970346  
36.3011628  
35.6059142  
34.9034407  
34.1936976  
33.4844919  
32.7679750  
32.0441016  
31.3206783  
30.5898559  
29.8515885  
29.1093199  
28.3673876  
27.6179418  
26.8687878  
26.1120756  
25.3477584  
24.5836411  
23.8118731



CASUALTY LOSS  
PAYMENT DATE

01/10/2002  
02/10/2002  
03/10/2002  
04/10/2002

CASUALTY LOSS  
VALUE

23.0324069  
22.2530470  
21.4659420  
20.6710440

CASUALTY LOSS  
PAYMENT DATE

First Day Following  
Lease Expiration

CASUALTY LOSS  
VALUE

20.000

CERTIFICATE OF DELIVERY AND ACCEPTANCE NO. \_\_\_\_\_

Borg-Warner Chemicals, Inc. ("Lessee"), Lessee under that certain Equipment Lease Agreement ("Lease") dated as of \_\_\_\_\_, 19\_\_\_\_ between Lessee and BarclaysAmerican/Leasing, Inc. ("Lessor") hereby acknowledges that Lessee has accepted, as agent for Lessor and on its own behalf, delivery of the following equipment ("Equipment") and the simultaneous lease of such Equipment to Lessee under the Lease:

Delivery Date _____	Description _____	Location _____	Serial No. _____	Lessor's Cost _____
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On the respective Delivery Date, Lessor leased to Lessee, and Lessee accepted and leased from Lessor, the Equipment pursuant to the Lease, Lessee warrants that the Equipment was in good condition and working order as of the respective Delivery Date.

Lessee hereby certifies that (1) the representations and warranties of Lessee contained in the Lease, and of Lessee in any certificate delivered pursuant thereto are true and correct on and as of the date hereof with the same effect as though made on the date hereof; and (2) as of the date hereof, there is no Event of Default under the Lease and no event has occurred which, but for the lapse of time or the giving of notice or both, would be such an Event of Default or default. Unless otherwise indicated, capitalized terms used herein and in the opinion of counsel attached hereto shall have the meanings specified in the Lease.

BORG-WARNER CHEMICALS, INC.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

ACKNOWLEDGMENT

This Certificate of Delivery and Acceptance No. \_\_\_\_ is hereby  
acknowledged by Lessor this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Lessor:

BARCLAYSAMERICAN/LEASING, INC.

By: \_\_\_\_\_  
Title:

OPINION OF COUNSEL FOR LESSEE

1. First Delivery Date. The opinion of counsel for Lessee for the First Delivery Date shall state that (i) Lessee is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware; (ii) Lessee has the full power and authority to execute, deliver and perform the Lease, the Certificates of Delivery and Acceptance and the Assignment of Purchase Order and to own or lease its properties and to carry on its business as now conducted and as contemplated hereby; (iii) the Lease has been duly authorized, executed and delivered by Lessee and constitutes the legal, valid and binding obligations of Lessee, enforceable against it in accordance with the terms thereof; (iv) Certificates of Delivery and Acceptance and Assignment of Purchase Order with respect to the Units have each been duly authorized by Lessee and, when executed and delivered by Lessee, will constitute the legal, valid and binding obligations of Lessee, enforceable against it in accordance with the terms thereof; (v) no authorization, consent or approval of, notice to or filing with any governmental authority is required for the execution, delivery and performance by Lessee of the Lease, the Certificates of Delivery and Acceptance and the Assignment of Purchase Order; (vi) neither the execution, delivery or performance by Lessee of the Lease, the Certificates of Delivery and Acceptance and the Assignment of Purchase Order; nor compliance with the terms and provisions thereof, conflicts or will conflict with or will result in a breach or violation of any of the terms, conditions or provisions of any law, governmental rule or regulation or the Articles of Incorporation, as amended, or Bylaws, as amended, of Lessee or, any order, write injunction or decree of any court or governmental authority against Lessee or by which it or any of its properties is bound or any indenture, mortgage or contract or other agreement or instrument to which Lessee is a party or by which it or any of its properties is bound, or constitutes or will constitute a default thereunder or will result in the imposition of any lien upon any of its properties; (vii) to such counsel's knowledge after due inquiry, there are no suits or proceedings pending or threatened in any court or before any regulatory commission, board or other governmental administrative agency against or affecting Lessee which could have a material adverse effect on its ability to fulfill its obligations under the Lease; and (viii) Lessee's principal place of business and chief executive office (as such terms are used in the Uniform Commercial Code) is located at 101 N. Wacker, Chicago, Illinois.

2. Purchase Obligation. The opinion of counsel for Lessee on each Delivery Date subsequent to the First Delivery Date shall state the matters set forth in opinion (iv) of Section 1 of this Exhibit E(1).

3. Qualification and Reliance. In giving an opinion provided for herein, counsel for Lessee may qualify such opinion that any agreement is enforceable in accordance with its terms by a general reference to (i) limitations imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of lessors' or creditors' rights generally, (ii) to applicable laws limiting certain remedial provisions of the Lease which, in the opinion of counsel for Lessee, will not materially interfere with the practical realization of the benefits or security to be provided therefrom and (iii) to general principals of equity. Counsel for Lessee may further qualify such opinion by a limitation to the law of the State of West Virginia and the laws of the United States.

EXHIBIT F  
TO LEASE

BILL OF SALE

PLM Railcar Management Services, Inc., a \_\_\_\_\_ corporation ("Seller"), for good and valuable consideration, the receipt of which is hereby acknowledged, hereby sells, grants, transfers, and delivers to BarclaysAmerican/Leasing, Inc. ("Buyer"), as Lessor under that certain Equipment Lease Agreement dated as of \_\_\_\_\_, 19\_\_\_\_, all of its right, title and interest, if any, in and to the following equipment (hereinafter "Leased Equipment"):

<u>Description</u>	<u>Model</u>	<u>Serial Number</u>
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to have and to hold said Leased Equipment unto itself, its successors and assigns forever.

Seller warrants and represents that the Leased Equipment is free and clear of all liens or encumbrances, and that Seller agrees to defend Buyer's title to the Equipment at its sole cost and expense. Seller assigns any and all warranties and agreements including, without limitation, any applicable manufacturer warranties with respect to the Leased Equipment to the Buyer.

IN WITNESS WHEREOF, PLM Railcar Management Services, Inc. has caused this Bill of Sale to be executed in its name by a duly authorized officer on this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

PLM RAILCAR MANAGEMENT SERVICES, INC.

By \_\_\_\_\_  
Title:

EXHIBIT G  
TO LEASE

GUARANTY

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned (herein "Guarantor"), unconditionally guarantees to BARCLAYSAMERICAN/LEASING, INC. ("Lessor"), having a place of business at 201 South Tryon Street, Charlotte, NC 28231, the full and prompt performance and payment when due by BORG-WARNER CHEMICALS, INC. (herein "Obligor"), having a place of business at Parkersburg, West Virginia, of all obligations which Obligor presently or hereafter may have to Lessor, arising in connection with the Equipment Lease Agreement dated as of \_\_\_\_\_ ("Lease") between Lessor as lessor and Obligor as lessee, and any related documents.

The Guarantor acknowledges that it has received a copy of the Lease dated as of \_\_\_\_\_ and is fully aware of and consents to all the terms and conditions thereof.

The Guarantor agrees that it shall not be necessary, as a condition to enforce this Guaranty, that suit be first instituted against Obligor or any other guarantor or that any rights or remedies against Obligor or any other guarantor be first exhausted, it being understood and agreed that the liability of the Guarantor hereunder shall be primary, direct, and in all respects unconditional.

This shall be a continuing Guaranty and irrespective of the lack of notice to or consent of Guarantor with respect to the following items, its obligations hereunder shall not be impaired in any manner whatsoever by any:

- (a) new agreements or obligations of Obligor with or to Lessor or any amendments, extensions, modifications, renewals or waivers of default;
- (b) adjustments, compromises or releases of any obligations of Obligor, Guarantor, any other guarantor or other parties, or exchanges, releases or sales of any security of Obligor, Guarantor or any other guarantor or other parties;
- (c) claim which Obligor has or might have against Lessor, or any other party;
- (d) compositions, extensions, moratoria or other relief granted to Obligor or any other guarantor pursuant to any statute presently in force or hereafter enacted; or
- (e) interruptions in the business relations between Lessor and Obligor.

In the event the Lease or any rights, duties or obligations arising thereunder are amended or modified by the parties thereto, the Guarantor shall be liable hereunder for such obligations only as amended or modified.

Notice of Lessor's acceptance hereof, of default or nonpayment by Obligor, any other guarantor or any other parties, or presentment, protest and demand, or any and all other matters of which Guarantor otherwise might be entitled, is hereby waived; provided, however, that Guarantor shall be entitled to receive copies of any notices of default to which the Obligor is entitled.

The Guarantor hereby represents, warrants and covenants to Lessor as follows:

(i) Guarantor is a corporation duly organized, validly existing and in good standing under the laws of the State of \_\_\_\_\_.

(ii) Guarantor has full power and authority to execute, deliver and perform this Guaranty and to carry on its business as now conducted and as contemplated hereby.

(iii) This Guaranty has been duly authorized, executed and delivered by Guarantor and constitutes the legal, valid and binding obligations of Guarantor, enforceable against it in accordance with the terms hereof and thereof, subject, as to enforceability of remedies, to limitations imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the enforcement of creditors' rights generally and to general principles of equity.

(iv) No authorization, consent or approval of, notice to or filing with any governmental authority is required for the execution, delivery and performance by Guarantor of this Guaranty.

(v) Neither the execution, delivery or performance by Guarantor of this Guaranty nor compliance with the terms and provisions thereof, conflicts or will conflict with or will result in a breach or violation of any of the terms, conditions or provisions of any law, governmental rule or regulation or the charter documents, as amended, or bylaws, as amended, of Guarantor or any order, writ, injunction, or decree of any court or governmental authority against Guarantor or by which it or any of its properties is bound or any indenture, mortgage or contract or other agreement or instrument to which Guarantor is a party or by which it or any of its properties is bound, or constitutes or will constitute a default thereunder or will result in the imposition of any lien not permitted by this Guaranty upon any of its properties.

(vi) Except for those suits or proceedings previously disclosed to Lessor, there are none pending or, to the knowledge of Guarantor, threatened in any court or before any regulatory commission,



board or other governmental administrative agency against or affecting Guarantor which could have a material adverse effect on its ability to fulfill its obligations hereunder.

(vii) Guarantor's principal place of business and chief executive office (as such terms are used in the Uniform Commercial Code) is located in \_\_\_\_\_.

(viii) The consolidated balance sheet and statement of income of Guarantor heretofore delivered to the Lessor and certified by \_\_\_\_\_ have been prepared in accordance with generally accepted accounting principles and fairly present the financial position of the Guarantor on and as of the date thereof and the results of its operations for the period or periods covered thereby. Since December 31, 1985, there has been no material and adverse change in the financial condition of the Guarantor from that shown in such balance sheet and statement of income.

Guarantor shall give to Lessor the following:

(i) Promptly after the same shall have come to the attention of a responsible officer of the Guarantor, notice of any claim, demand, action, legal proceeding or dispute that (A) involves the rights of Lessor hereunder or under the Lease, (B) involves the interpretation of any provision of this Guaranty or the Lease or (C) directly or indirectly affects the tax or other liability or rights of Lessor or Guarantor hereunder.

(ii) At least sixty (60) days prior thereto, notice of any change in Guarantor's name and any change in the location of the principal place of business or chief executive office of Guarantor.

(iii) Within 90 days after the close of each fiscal year of the Guarantor a consolidating and a consolidated balance sheet and statement of changes in financial position of the Guarantor at and as of the end of such fiscal year, together with a consolidated statement of income of the Guarantor for such fiscal year, with comparative figures for the immediately preceding fiscal year, certified by independent public accountants of recognized international standing amongst the "Big 8" selected by the Guarantor.

(iv) Within 60 days after the close of each of the first three quarters of each fiscal year of the Guarantor a consolidated balance sheet and a consolidated income statement of the Lessee at and as of the Guarantor at and as of the end of such quarter with comparative figures for the corresponding period of the immediately preceding fiscal year, certified as presenting fairly the financial condition and results of operations of the Guarantor by a financial officer of the Guarantor empowered to do so.

Guarantor shall execute and deliver all such instruments and take such action as Lessor or its assigns from time to time may reasonably request in order to assure the full benefits intended to be created by this Guaranty, including but not limited to an opinion of Guarantor's counsel in form Exhibit H and substance satisfactory to Lessor as to the validity and enforceability of the Guaranty.

This Guaranty is assignable with prior written notice to Guarantor, and shall be construed liberally in favor of Lessor and shall inure to the benefit of Lessor's successors or assigns.

The obligations hereunder of Guarantor shall be binding upon its respective successors, assigns and legal representatives. The failure of any such person to sign this or a similar guaranty shall not affect the liability hereunder of Guarantor.

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be made and executed by its duly authorized officer and is effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 1986.

GUARANTOR:

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

EXHIBIT H  
SAMPLE ATTORNEY'S OPINION LETTER FOR GUARANTY

December 22, 1986

Dear Sirs:

We have acted as counsel to Borg Warner Corporation ("Borg Warner") in connection with the execution and delivery of a Guaranty dated as of \_\_\_\_\_ (the "Guaranty") by Borg Warner of the obligations of Borg-Warner Chemicals, Inc. (the "Lessee") under an Equipment Lease ("the Lease") dated as of \_\_\_\_\_ made between the Lessee and Barclays American/Leasing Inc. (BA/L).

The capitalized terms used without definition in this opinion which are defined in the Lease have the respective meanings herein as are specified in the Lease.

We have examined a photocopy of an executed copy of the Guaranty and Lease, certificates of officers and representatives of Lessee and such other documents as we have deemed necessary for the expression of the opinions set forth below. In such examinations, we have assumed the genuineness of all signatures on the documents which we have examined and the conformity to original documents of all documents produced to us as copies and the authenticity of all original documents which or copies of which have been submitted to us.

We do not express any opinion herein as to the laws of any jurisdiction other than the laws of \_\_\_\_\_.

Based upon and subject to the foregoing, we are of the opinion that:

1. Borg Warner is a company duly incorporated, validly existing and in good standing under the laws of \_\_\_\_\_.
2. Borg Warner has the corporate power and authority to execute, deliver, and perform its obligations under the Guaranty.
3. The Guaranty has been duly authorized by all necessary corporate action of Borg Warner.

December 22, 1986

Page 2

4. The Guaranty has been duly executed and delivered by Borg Warner and, assuming the Guaranty constitutes a legal, valid and binding obligation under the laws of the State of North Carolina, the laws to which it is expressed to be subject, the Guaranty constitutes a legal valid and binding obligation of Borg Warner enforceable in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency, moratorium or other laws from time to time in effect relating to or affecting generally the enforcement of creditors' rights and except that no opinion is rendered as to the availability of any particular equitable remedy, such as specific performance.

5. Registration with, approval or filing with, or any other action by or with any governmental agency or similar office is not required in connection with the execution and delivery of the Guaranty.

6. The execution and delivery by Borg Warner of the Guaranty does not violate any provision of any law, any order of any court or governmental agency, or By-Laws of Borg-Warner.

7. There is not now pending against or affecting Borg Warner, nor to our knowledge is there threatened, any action, suit or proceeding at law or in equity by or before any court or administrative agency which if adversely determined would materially impair or affect Borg Warner consolidated business or financial condition.

Very truly yours,

EXHIBIT I  
ASSIGNMENT OF PURCHASE ORDER

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, ("Assignor"), a (partnership/corporation), hereby sells, assigns, transfers and sets over unto BarclaysAmerican/Leasing, Inc., ("Assignee"), all of Assignor's right, title and interest in and to the equipment ("Equipment") as set forth and described in the purchase order agreement ("Purchase Order") between ("Seller") and Assignor, which Purchase Order is dated \_\_\_\_\_, 19\_\_\_\_ and attached hereto; and in addition, Assignor sells, assigns transfers and sets over unto Assignee all of Assignor's rights and interests in and to said Purchase Order, including without limitation, (a) the right, upon valid tender by Seller, to purchase the Equipment pursuant to the Purchase Order, and the right to take title to the Equipment and to be named the purchaser in each bill of sale to be delivered by Seller for the Equipment and to be named as owner in any document or filing to be made upon public records, and (b) any and all rights of Assignor to compel performance of the terms of the Purchase Order in respect of the Equipment.

Assignor expressly agrees that, anything herein contained to the contrary notwithstanding: (a) Assignor shall at all times remain liable to Seller under the Purchase Order to perform all of the duties and obligations of Assignor thereunder to the same extent as if this Assignment had not been executed; (b) the exercise by Assignee of any of the rights assigned hereunder shall not release Assignor from any of its duties or obligations to Seller under the Purchase Order except to the extent that such exercise by Assignee shall constitute performance of such duties and obligations; and (c) Assignee shall have no obligation or liability under the Purchase Order by reason of, or arising out of, this Assignment, or be obligated to perform any of the obligations or duties of Assignor under the Purchase Order or to make any payment or to make any inquiry as to the sufficiency of any payment or to present or file any claim or to take any other action with respect to the Purchase Order.

Assignor agrees that at any time and from time to time upon the written request of Assignee, Assignor will properly and duly execute any and all such further instruments and take such further action as Assignee may reasonably request in order to obtain the full benefits of this Assignment of Purchase Order and of the rights and powers herein granted.

Assignor hereby represents and warrants that the Purchase Order is in full force and effect and that Assignor is not in default thereunder. Assignor hereby further represents and warrants that Assignor has not assigned or pledged, and hereby covenants that it will not assign or pledge, so long as this Assignment of Purchase Order shall remain in effect, the whole or any part of the rights hereby assigned or any of its rights with respect to the Equipment to anyone other than Assignee.

IN WITNESS WHEREOF, Assignor has caused this Assignment of Purchase Order to be duly executed as of the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
(Assignor)

By: \_\_\_\_\_

Title: \_\_\_\_\_

BARCLAYSAMERICAN/LEASING, INC. (Assignee)

By: \_\_\_\_\_

Title: \_\_\_\_\_

SELLER CONSENT TO ASSIGNMENT OF PURCHASE ORDER

Seller hereby consents to the Assignment of the Purchase Order from Assignor to Assignee upon the terms and conditions therein contained and hereby confirms to Assignee that:

(a) all representations, warranties and agreements of Seller under the Purchase Order or otherwise with respect to the Equipment shall inure to the benefit of Assignee to the same extent as if it was originally named the buyer therein; (b) Assignee shall not be liable for any of the obligations or duties of Assignor under the Purchase Order or otherwise, nor shall the Assignment of Purchase Order give rise to any duties or obligations whatsoever on the part of Assignee owing to Seller; and (c) Seller hereby agrees that it will comply with the requirements of any applicable law in producing and constructing the Equipment or performing services to be furnished under the Purchase Order.

\_\_\_\_\_  
(Seller)

By: \_\_\_\_\_

Title: \_\_\_\_\_